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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11	
CEDAR CHEMICAL CORPORATION and VICKSBURG CHEMICAL COMPANY,	Case Nos.	02-11039 (SMB) and 02-11040 (SMB)
Debtors.	Jointly Administered	

JOINT REPLY OF DEBTORS AND AGENT FOR PRE-PETITION SECURED LENDERS IN SUPPORT OF DEBTORS' MOTION FOR APPROVAL OF ABANDONMENT OF WEST HELENA MANUFACTURING FACILITY AND VICKSBURG MANUFACTURING FACILITY AND GRANTING RELATED RELIEF

Cedar Chemical Corporation and Vicksburg Chemical Company (the "Debtors") and JPMorgan Chase Bank, as agent (the "Agent") to the pre-petition secured lenders (the "Secured Lenders"), hereby reply to objections by (a) the United States Environmental Protection Agency ("USEPA"), (b) the Arkansas Department of Environmental Quality ("ADEQ"), (c) the Mississippi Commission on Environmental Quality and the Mississippi Department of Environmental Quality (collectively the "MDEQ" and, together with the USEPA and the ADEQ, the "Agencies") and (d) Harcross Chemicals Inc. ("Harcross") to Debtors' Motion for Approval of Abandonment of West Helena Manufacturing Facility and Vicksburg Manufacturing Facility and Granting Related Relief (the "Motion").[1]

PRELIMINARY STATEMENT

This Motion is not a debate over the importance of environmental protection. Since March, the Debtors have spent approximately $6 million on environmental costs, all of which funds were the cash collateral of the Secured Lenders. The unfortunate reality that compels abandonment in these cases is not a lack of respect for the environment – it is a lack of funds. The Properties have been idle since well before the beginning of these cases. Since the inception of these cases and continuing through today, these estates have been administratively insolvent. Other than a few assets that the Secured Lenders have agreed to leave behind for the benefit of the estates, the Secured Lenders have valid and perfected first priority liens on all of the assets of

[1] The West Helena Manufacturing Facility, which is owned by Cedar Chemical Corporation, and the Vicksburg Manufacturing Facility, which is owned by Vicksburg Chemical Company, will be referred to collectively as the "Properties."

the Debtors. Accordingly, the Debtors lack the funds required to continue the costly, long-term, environmental management of the Properties.

Despite the lack of unencumbered funds, in the seven months since the Petition Date, the Debtors have made every effort to continue their rigorous environmental compliance program. Most importantly, they have undertaken the costly process of moth-balling and securing the Properties, the critical first step in a longer range environmental remediation process.

This extensive environmental effort by the Debtors was funded by the Secured Lenders through the use of approximately $6 million of their cash collateral. The Secured Lenders agreed to the use of their cash collateral despite the fact that the Debtors could not provide them with adequate protection, as required under §§ 361 and 363 of the Bankruptcy Code. While total recoveries in these cases are unknown at this time, this $6 million of cash collateral could represent a diminishment of well over 25% of the Secured Lenders' total recovery.

The evidence which will be presented at the October 7, 2002 hearing will show that the Debtors have made every effort to administer and moth-ball the Properties in an environmentally responsible manner and that the Secured Lenders' acceded to, and paid for, all of the Debtors' environmental-related expenditure requests. As part of the moth-balling process, hazardous chemicals stored in drums, tanks and other containers have been removed, and the equipment used in the Debtors' prior operations has been emptied, cleaned and stabilized to prevent chemical releases. Although the Properties are still saddled with the soil and groundwater contamination inherited from previous owners and operators, upon completion of the moth-

balling process, the Properties will be free of the dangerous bulk chemicals that have posed the most immediate risk to the public.

None of the voluminous Objections filed by the Agencies cite to a single authority that supports the proposition that a secured lender is required to fund environmental clean-up in perpetuity. Indeed, as detailed below, courts have consistently rejected environmental authorities' attempts to foist the burden and cost of environmental remediation onto secured lenders. See Section I.B, infra.

The dire economic reality of these cases leads to the inevitable conclusion that abandoning the Properties is the Debtors' only option. While it is unfortunate that the Agencies may very well end up assuming continued oversight of latent soil and groundwater problems at the Properties, it is precisely because such circumstances occur that state and federal governments establish funds available for environmental clean-up. See, e.g., USEPA website at www.epa.gov/ superfund /tools /today/ cost3.htm (visited on 9/22/02) (Superfund "money is used to clean up sites where there is very little hope of either finding those responsible, or getting them to pay for or conduct the cleanup. For example, if a site or an area of contamination is discovered but the polluting company has gone bankrupt, the Trust Fund takes over." (emphasis added)).

ARGUMENT

I. The Agencies Have No Legal or Equitable Right to the Encumbered Assets of the Estates

A. The Estates Have No Unencumbered Assets That Could be Used to Satisfy the Agencies' Claims

The Agencies fail to refute the Debtors' showing that the Midlantic limitation on the abandonment power is premised upon a debtor having the funds to remedy the environmental problems at issue. Motion at ¶¶ 43-46. Instead, the Agencies seem to dispute the Debtors' assertion that the estates simply do not have the necessary unencumbered assets. As the Court well knows, this very issue has been the subject of extensive review and investigation by the Official Committee of Unsecured Creditors (the "Committee") over the past several months, culminating on August 21, 2002 with the Court's entry of the Final Order Authorizing the Use of Cash Collateral (the "Final Cash Collateral Order").

Indeed, on March 8, 2002 (the "Petition Date"), the Debtors stipulated that the Secured Lenders held valid and perfected first priority liens on substantially all the assets of the Debtors, and waived all possible claims against the Secured Lenders.

On April 2, 2002 the Court entered the Supplemental Interim Order Authorizing the Use of Cash Collateral, which provided, inter alia, that all parties in interest, including the Committee, would have until June 13, 2002 to investigate the Secured Lenders' liens and that unless a party in interest filed a claim before that date, any and all challenges and claims with respect to the liens were to be barred.

Thereafter, the Committee embarked on an extensive review of the Secured Lenders' liens. Leaving no stone unturned, the Committee sought and received no fewer than seven extensions of time to complete its review and investigation, extending the review period until the end of August. All tolled, the Committee spent approximately five months – and tens of thousands of the Secured Lenders' cash collateral – investigating the Secured Lenders' liens. At the end of the day, other than a few items that the Secured Lenders agreed to carve out from their pre-petition and adequate protection liens for the benefit of the estates, the Committee concluded that the Secured Lenders indeed hold valid and perfected first priority liens on all of the assets of the Debtors. See Final Cash Collateral Order, paragraph 20.

B. The Agencies Have No Legal or Equitable Right to the Secured Lenders' Cash Collateral

No legal or equitable basis exists to expend the Secured Lenders' remaining cash collateral on environmental remediation. All three Agencies rely on In re Environmental Waste Control, 125 B.R. 546 (N.D. Ind. 1991) for the proposition that a debtor "must comply with environmental law and pursue cleanup and corrective action at the landfill, regardless of its financial insolvency." 125 B.R. at 552. If the Agencies take this dictum to mean that the financial condition of the Debtors is irrelevant in considering an abandonment motion, they are wrong. See In re Smith-Douglass, Inc., 856 F.2d 12, 17 (4th Cir. 1988) ("The district court, contra to the bankruptcy court's conclusion, held that the financial condition of the debtor is irrelevant to the Midlantic analysis. This Court disagrees.").

Going one step further, the ADEQ relies on Environmental Waste Control for the proposition that the ADEQ's claims for environmental remediation have priority over the

Secured Lenders' claims. The ADEQ even seeks a determination by the Court that the Secured Lenders' cash collateral may be used, pursuant to § 363(c)(2) of the Bankruptcy Code, to begin environmental remediation work at once (See ADEQ Objection, paragraphs 41 and 49).

Significantly, the ADEQ fails to mention the subsequent history of the Environmental Waste Control case, in which the same court, clarifying its earlier decision, expressly stated that it had not held that claims for environmental remediation had priority over the claims of a secured creditor, but simply observed that cash collateral could be used for environmental remediation pursuant to § 363(e) "upon the provision of adequate protection of the secured creditor's interest." Resources Unlimited, Inc. v. Environmental Waste Control. Inc., 158 B.R. 998 (N.D. Ind. 1993).

Simply put, Environmental Waste Control does not address whether an environmental agency has priority over the claims of a secured creditor, and therefore is irrelevant to the relief sought by the ADEQ. Many other cases, however (none of which are cited by the ADEQ), have decided this very issue in a manner directly adverse to the ADEQ's position.

In one case, the USEPA sought reimbursement of costs incurred for the removal of drums containing hazardous chemicals found on the debtor's property. See In re T.P. Long Chem., Inc., 45 B.R. 278 (Bankr. N.D. Ohio 1985). Although the Court found, under the circumstances of that case, that the USEPA's costs were entitled to administrative expense priority, the unencumbered assets of the estate were insufficient to pay the USEPA's claim. The agency therefore attempted to charge the secured creditors' collateral under § 506(c) of the Bankruptcy

Code.[2] In denying the USEPA's request, the Court found that the USEPA's action conferred no benefit on the secured lenders. The USEPA then argued that, as a matter of equity, its administrative claim should have priority over the secured creditor's claim. In denying the USEPA's request, the Court found that it would be inequitable to make the secured lender bear the cost of remediating any environmental damage caused by property in which it holds a security interest, and that the secured lender "should not be expected to bear the costs of these administrative expenses merely because the estate has insufficient assets." 45 B.R. at 289-290.

In another case, a liquidating trustee sought to abandon a decommissioned oil refinery that had been in operation for over 65 years. In re Oklahoma Refining Co., 63 B.R. 562 (Bankr. W.D. Okla. 1986). The estate had secured claims against it totaling $40 million and an estate worth only $4 million. Id., at 563. State environmental agencies opposed abandonment, citing concern for public health from the threatened contamination of an aquifer outcropping at the refinery site and the presence there of "disposal pits" that "leached directly into this fresh water source." Id. Test results from monitoring wells showed a number of toxic substances (including arsenic, lead, cadmium, and chromium) "exceeding acceptable norms by substantial amounts." Id. The debtor in Oklahoma Refining used cash collateral (with the secured creditors' consent) to take substantial steps to minimize additional hazards, including the disposal of waste barrels and scrap metal and the cleaning out of tank bottom sludge. Id. at 564. However, at the time of the

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[2] The T.P. Long case was decided prior to Hartford Underwriters Ins. Co. v. Union Planters Bank, 530 U.S. 1 (2000), in which the Supreme Court held that 11 U.S.C. § 506(c) "does not provide an administrative claimant an independent right to use the section to seek payment of its claim." Id., at 14.

proposed abandonment, remaining clean-up of the site would have cost a minimum of $2.5 million and up to thirty years of monitoring and additional clean-up operations. Id. Because there were simply no unencumbered funds available to carry out the additional work required by the state agencies, the agencies argued that "the funds necessary for compliance with State law should be used for those purposes before distribution to the holders of secured claims." Id. at 564-65. The Court disagreed and granted abandonment:

> To require strict compliance with State environmental laws under the facts of this case could create a bankruptcy case in perpetuity and fetter the estate to a situation without resolve. This trustee, with consent of the secured creditors, has done what is reasonable under the circumstances. To pre-empt the administration of this estate would derogate the spirit and purpose of the bankruptcy laws requiring prompt and effectual administration within a limited time period. Id., at 565-66 (citation omitted).

In a subsequent case, the State of New York claimed a superpriority interest in encumbered proceeds from the sale of debtor's personal property. See In re Paris Indus. Corp., 80 B.R. 2 (Bankr. D. Me 1987). As in T.P. Long, the Court in Paris found that the agency had an administrative claim relating to the clean-up of debtor's real property. The Court, however, rejected the agency's claim that it had priority over the secured lender's valid and perfected first security interest in the proceeds of the sale of debtor's personal property. 80 B.R. at 5 ("The court will not, in the absence of legislation or other authority, add to [the secured lender's] losses by making [it] an insurer of all risks caused by its collateral."). See also In re Synfax Mfg., Inc., 126 B.R. 30, 34 (Bankr. D.N.J. 1990) (environmental clean-up costs "do not take priority over the secured claim of a creditor with a valid and perfected security interest in either the assets, accounts receivable, or proceeds of sale of other assets sold by the debtor or trustee in liquidating

the estate."); In re Corona Plastics, Inc., 99 B.R. 231, 238 (Bankr. D.N.J. 1989) (costs of complying with state environmental statute do not take priority over the claim of a secured creditor).

Where, as here, the estates have no unencumbered assets, and all creditors – including the Secured Lenders who, in addition to massive losses on their loans, have borne approximately $6 million in post-petition environmental costs – have suffered greatly, neither law nor equity permits granting the Agencies priority over the remaining, encumbered assets of the estates. As the Court in Paris observed, "[s]uch a creation would push us far beyond the existing frontier established by reported cases and existing legislation, with serious, and perhaps unforeseen, consequences to commercial lending and investment activities and other parts of the nation's economy." 80 B.R. at 5.

II. The Agencies' Sovereign Immunity Does Not Bar the Adjudication of Debtors' Abandonment Motion

A. The Debtors Are Not Seeking to Transfer Ownership of the Properties to the Agencies or to Compel the Agencies to Take Possession of Same

The Agencies resist – both as a matter of statutory interpretation of § 554 of the Bankruptcy Code and on sovereign immunity grounds – any attempt to compel them to take possession of the Properties or to have ownership of the Properties transferred to them. These objections are irrelevant and, in any event, misplaced since the Debtors do not seek an order or injunctive relief that would force the Agencies to do anything. As noted at the September 25th hearing, the Debtors seek only to abandon the Properties in compliance with § 554 of the

Bankruptcy Code, so that the Properties are no longer part of the bankruptcy estates; the Debtors do not seek to transfer title of the Properties to anyone, nor do they seek to compel any third party to take possession of the Properties.

The Debtors have spent many years and several millions of dollars investigating and remediating the Properties. Most recently, the Debtors' efforts have focused on moth-balling the Properties – a cost borne entirely by the Secured Lenders – in an environmentally safe and prudent manner. The Debtors believe that the moth-balling process in these cases meets both the letter and spirit of the rule set forth in Midlantic National Bank v. New Jersey Dep't of Envtl. Protection, 474 U.S. 494 (1986), and will enable the Properties to be abandoned in compliance with applicable bankruptcy law.[3] Nevertheless, even after the moth-balling process is complete, the Debtors recognize that the Properties will still be affected by pre-existing soil and groundwater contamination, which can only be addressed through long-term oversight or costly environmental remediation.

In stating that the Agencies should "now take the lead" for the long-term remediation process to go forward (see Motion, at ¶ 53), the Debtors in no way intend for the Court to order

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[3] At the September 25th hearing, the Court requested the parties' views as to the proper allocation of the burden of proof in an abandonment case. The leading case on this point is In re St. Lawrence Corp., 248 B.R. 734 (D.N.J. 2000). In St. Lawrence, the district court held that the party seeking to abandon property bears the initial burden of showing, under § 554(a), that the property is either burdensome to the estate or of inconsequential value and benefit to the estate. If such burden is met, then the party opposing abandonment must prove, pursuant to Midlantic, each of the following elements: (1) the existence of an identified hazard posing a risk of imminent and identifiable harm to public health and safety; and (2) evidence that abandonment will violate a statute or regulation reasonably designed to protect public health and safety from imminent and identifiable harm that is caused by identified hazards. If the party opposing abandonment meets its burden of proof, then the burden shifts back to the party seeking abandonment to establish that compliance with the statute or regulation at issue would be so onerous as to interfere with administration of the estate. Id., at 740-41.

the Agencies to complete the long-term remediation of the Properties. Rather, the Debtors are merely acknowledging that the Agencies, who (a) have worked with the Debtors or their predecessors in interest for more than a decade, (b) are intimately familiar with the environmental condition of the Properties, and (c) have the statutory authority under applicable non-bankruptcy law to respond to any future threat of harm to public health or the environment, are unquestionably in the best position to assure continued oversight of the Properties after abandonment is permitted.

For instance, under CERCLA, the USEPA has the statutory authority to respond to (a) the release or substantial threat of release of a hazardous substance into the environment, or (b) the release or substantial threat of release into the environment of any pollutant or contaminant which may present an imminent and substantial danger to the public health or welfare. See 42 U.S.C. § 9604.[4] Thus, if the USEPA determines in the future that there is a situation calling for immediate response, it has the power to carry out such response. The USEPA's authority includes, among other things, the right to enter any facility "to determine the need for response or the appropriate response or to effectuate a response action" – 42 U.S.C. § 9603(e)(3) – as well as the express right to acquire any real property if needed to conduct a remedial action" – 42 U.S.C. § 9604(j). The USEPA's right of entry has been broadly construed. See United States v. W.R.

[4] See also Ark. Code § 8-7-408 and Miss. Code § 17-17-29, which grant the ADEQ and the MDEQ (respectively) similar powers.

Grace & Co., 134 F. Supp.2d 1182 (D. Mont. 2001).[5] Moreover, pursuant to 42 U.S.C. § 9611, governmental response costs incurred pursuant to 42 U.S.C. § 9604 may be paid from the Hazardous Substances Trust Fund (or "Superfund") established pursuant to 26 U.S.C. § 9507.[6] As the USEPA itself states on its website, "Trust Fund money is used to clean up sites where there is very little hope of either finding those responsible, or getting them to pay for or conduct the cleanup. For example, if a site or an area of contamination is discovered, but the polluting company has gone bankrupt, the Trust Fund takes over."[7]

Simply put, the fear that abandoning the Properties will lead to an environmental impasse is misplaced, since applicable federal and state non-bankruptcy law (such as CERCLA and its state-law counterparts) will not permit such a result. Should the Properties in the future pose some threat to the environment, the Agencies have the authority and the resources necessary to address the problem. There is no need for this Court to order the Agencies to carry out their statutory mandate.

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[5] In these cases, entry poses no problem, as both the Debtors and the Secured Lenders have made clear that the Agencies would be given full access to the Properties. Under the circumstances, the USEPA's argument that 42 U.S.C. § 9604(j) ("There shall be no cause of action to compel the President to acquire any interest in real property under this chapter.") precludes the relief sought by Debtors (USEPA Objection, paragraph 45) is a red herring. See United States v. Charles George Trucking Co., 682 F. Supp. 1260, 1271 (D. Mass. 1988) (where the necessary remediation can be performed without the need for USEPA to acquire the property, 42 U.S.C. § 9604(j) does not come into play).

[6] See also Ark. Code §§ 8-7-410 and 8-7-509 creating the Arkansas Emergency Response Fund and the Hazardous Substance Remedial Action Trust Fund, respectively, and Miss. Code § 17-17-54 creating the Mississippi Uncontrolled Site Evaluation Trust Fund.

[7] See www.epa.gov/superfund/tools/today/cost3.htm (visited on 9/22/02).

B. The Agencies Have Waived Their Sovereign Immunity by Filing Proofs of Claim

If the Court determines that abandonment of the Properties is permitted pursuant to § 554 of the Bankruptcy Code, the doctrine of sovereign immunity would not be a bar to such a determination. Contrary to the claims of the Agencies, they have waived their sovereign immunity by filing proofs of claim.[8] By voluntarily submitting to the jurisdiction of this Court in order to share in the assets of the estates, the Agencies have made themselves subject to the orders of the Court.

More than half a century ago, the Supreme Court ruled in Gardner v. New Jersey, 329 U.S. 565 (1947) that sovereign immunity was waived by the filing of a proof of claim. Accord, e.g., In re 999 Fifth Ave. Assoc., L.P., 963 F.2d 503(2d Cir. 1992). Even after the Supreme Court's expansive reading of a state's Eleventh Amendment rights in Seminole Tribe v. Florida, 517 U.S. 44 (1996), Circuit Courts of Appeal repeatedly have affirmed this well established rule of waiver. For example, in In re Burke, 146 F.3d 1313 (11th Cir. 1998), the Eleventh Circuit ruled that by filing a proof of claim, Georgia had waived its sovereign immunity in an action by the debtors for enforcement of the automatic stay and a discharge injunction, including the award of attorney's fees. Similarly, in In re Rose, 187 F.3d 926 (8th Cir. 1999), the Eighth Circuit

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[8] The ADEQ filed proof of claim number 49, dated June 24, 2002, in the amount of $10,246.57 arising from unpaid "Superfund Fees" and other environmental related costs. The United States Attorney General on behalf of the USEPA filed proof of claim number 83, dated September 4, 2002, in the amount of $30 million for required environmental remediation actions. The Mississippi State Tax Commission filed proof of claim number 60, dated July 9, 2002, in the amount of $23,959.10. For purposes of waiver of a state's sovereign immunity in bankruptcy, it is immaterial that Mississippi's proof of claim was filed by the Tax Commission rather than the MDEQ. The filing of a proof of claim by one state agency results in the waiver of the sovereign immunity of all of the agencies of a state. In re Straight, 143 F.3d 1387 (10th Cir. 1998).

Court of Appeals ruled that Missouri had waived its sovereign immunity by filing a proof of claim in an action seeking the discharge of a student loan. The Supreme Court itself in its post-Seminole Tribe opinions has repeatedly cited Gardner to illustrate the manner in which a state's sovereign immunity may be waived. See, College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd., 527 U.S. 666, 681 n.3 (1999); Lapides v. Bd. of Regents of Univ. Sys. of Georgia, 122 S. Ct. 1640, 1643-1644 (2002). Accordingly, the Agencies cannot, through a claim of sovereign immunity, preclude this Court from ordering the abandonment of the Properties.

III. 28 U.S.C. § 959 Is Irrelevant In the Context of a Liquidation

Finally, the Agencies insist that abandonment of the Properties would violate 28 U.S.C. § 959(b), which states that a debtor in possession "shall manage and operate the property in his possession . . . according to the requirements of the valid laws of the State in which such property is situated." However, because § 959(b) applies only when the assets of the estate remain in operation – and not when they are shut down in the context of a liquidation – § 959(b) does not stand as an obstacle to abandonment of the Properties in these cases.

As the majority of the United States Supreme Court in Midlantic recognized, "§ 959(b) does not directly apply to an abandonment under § 554(a) of the Bankruptcy Code – and therefore does not delimit the precise conditions on an abandonment." 474 U.S. at 505. In his dissent, Justice Rehnquist elaborated on this point:

> Respondents contend that § 959(b) operates to bar abandonment in these cases. Assuming that temporary management or operation of a facility during liquidation is governed by § 959(b), I believe that a trustee's filing of a petition to abandon, as opposed to continued operation of a site pending a decision to abandon, does not constitute

> 'manage[ment]' or 'opera[tion]' under that provision. Not only would a contrary reading strain the language of § 959(b) . . ., it also would create an exception to the abandonment power without a shred of evidence that Congress intended one.

474 U.S. at 514 (per Rehnquist, dissenting) (citation omitted).

Moreover, the inapplicability of § 959(b) to the disposal of assets has been recognized in a number of cases both pre- and post-dating Midlantic. See, e.g., In re St. Lawrence Corp., 239 B.R. 720, 726 (Bankr. D.N.J. 1999) ("The majority opinion in Midlantic expressly states that 28 U.S.C. § 959(b) does not apply to an abandonment."), aff'd, 248 B.R. 734 (D.N.J. 2000); In re Valley Steel Prods. Co., 157 B.R. 442, 447 (Bankr. E.D. Mo. 1993) ("[T]he Court holds that 28 U.S.C. § 959(b) does not apply to [debtor] because [debtor] is liquidating its estate."); In re Circle K Corp., Nos. B-90-5052 through B-90-5075, 1991 Bankr. LEXIS 1190, at *36 (Bankr. D. Ariz. Apr. 5, 1991) ("Where the debtor is closing its operations, there is, as in the case of a liquidation, no sense that the debtor is continuing to operate or manage the business at the site."); In re Security Gas & Oil, Inc., 70 B.R. 786, 796 (Bankr. N.D. Cal. 1987) ("Section 959(b) does not govern, however, where the debtor's business has ceased all operations.") (citing Midlantic); In re Oklahoma Refining Co., 63 B.R. at 565 (§ 959(b) "does not directly apply to an abandonment under § 554(a)") (quoting Midlantic); In re Borne Chem. Co., 54 B.R. 126, 135 (Bankr. D.N.J. 1984) (in granting motion to abandon property in violation of environmental laws, the Court stated that "it appears that § 959(b) is applicable only where the property is being managed or operated for the purpose of continuing operations, which is not the case under the present circumstances"); In re Corona Plastics, Inc., 99 B.R. 231, 236 (Bankr. D.N.J. 1989)

("Where, as here, the Trustee is not conducting business, but instead is disposing of the assets of the estate, § 959(b) is not applicable.").

Accordingly, § 959(b) does not preclude abandonment of the Properties.

CONCLUSION

For the foregoing reasons, the Debtors and the Agent respectfully request that the Motion be granted.

Dated: New York, New York
October 2, 2002

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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
CEDAR CHEMICAL CORPORATION and VICKSBURG CHEMICAL COMPANY,	Case Nos. 02-11039 (SMB) and 02-11040 (SMB)
Debtors.	Jointly Administered

MOTION FOR APPROVAL OF ABANDONMENT OF WEST HELENA MANUFACTURING FACILITYAND VICKSBURG MANUFACTURING FACILITY AND GRANTING RELATED RELIEF: DEBTORS' PROPOSED WITNESSES AND EXHIBITS FOR OCTOBER 7, 2002 EVIDENTIARY HEARING

A. Proposed Witnesses

1. Philip Gund
2. John Miles

B. Proposed Exhibits

1. Vicksburg Chemical - Status of Clean-Up and Mothball Activities (see attached)
2. Cedar Chemical - Status of Clean-Up and Mothball Activities (see attached)
3. Forecast of Monthly Expenses to Maintain Vicksburg and West Helena Plants (see attached)

Dated: New York, New York
October 2, 2002

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Vicksburg Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002				
Facility	**Unit**	**Location**	**Action**	**Action date**
North plant	KNO3 Reactor	Vicksburg MS	Mothball - washed & air purged	3/8/02 - 9/30/02
North plant	Strong Acid	Vicksburg MS	Mothball - washed & air purged	3/8/02 - 9/30/02
North plant	Chlorine	Vicksburg MS	Mothball - emptied & air purged	3/8/02 - 9/30/02
North plant	N2O4	Vicksburg MS	Mothball - clean & air padded	3/8/02 - 9/30/02
North plant	KNO3 Crystallizers piping	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 9/30/02
North plant	KNO3 Melt tank	Vicksburg MS	Mothball - emptied & washed	3/8/02 - 9/30/02
North plant	handling systems	Vicksburg MS	Mothball - emptied & washed	3/8/02 - 9/30/02
North plant	Boiler	Vicksburg MS	Mothball - wet stored	3/8/02 - 9/30/02
North plant	Cooling water system	Vicksburg MS	Mothball - down, not drained	3/8/02 - 9/30/02
North plant	Freon system	Vicksburg MS	Mothball - down, freon isolated to receiver	3/8/02 - 9/30/02
North plant	KNO3 Bucket elevator	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 9/30/02
North plant	KNO3 Storage areas	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 9/30/02
South Plant	Boiler	Vicksburg MS	Mothball - wet stored	3/8/02 - 9/30/02
South Plant	Acid plant	Vicksburg MS	Mothball - washed & air purged	3/8/02 - 9/30/02
South Plant	Ammonia spheres	Vicksburg MS	Mothball - emptied & nitrogen purged	3/8/02 - 9/30/02
South Plant	Coating plant drum	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 9/30/02
South Plant	Coating plant piping	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 9/30/02
South Plant	Blending unit	Vicksburg MS	Mothball - emptied & clean	3/8/02 - 9/30/02
South Plant	MAP/MKP plant	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 9/30/02
South Plant	Kcarb ion exchanger	Vicksburg MS	Mothball - has inert resin in it	3/8/02 - 10/1/02
South Plant	KCarb plant	Vicksburg MS	Mothball - water washed & clean	3/8/02 - 10/2/02
South Plant	Cooling water system	Vicksburg MS	In service	N/A
South Plant	One air compressor	Vicksburg MS	In service	N/A
South Plant	Pond & Carbon system	Vicksburg MS	In service	N/A

Vicksburg Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002

Facility	Unit	Location	Material name	Quantity	Action	Action date	Disposal cost - $
Products Disposed							
North Plant	MAP/MKP plant	Vicksburg MS	MAP mother liquor	1 truck load	Disposed	8/13/2002	811
North Plant	Warehouse	Vicksburg MS	Miscl R+D	10 drums	Disposed	8/20/2002	11,508
Tri Island	Outside warehouse	Newrk NJ	Kcarb	11 tons	Disposed	9/30/2002	-
ERT	Outside warehouse	Chesapeake VA	KNO3 GG	12 tons	Disposed	9/30/2002	-
LPC	Outside warehouse	Stockton CA	Multicote	1 ton	Disposed	9/30/2002	-
					Total Disposed		**12,319**
Product to be Disposed or Used							
LPC	Outside warehouse	Stockton CA	Nutricote	25 tons	To be disposed	10/7/2002	-
Pakhoe	Outside warehouse	Tampa FL	KNO3 prill	285 tons	To be disposed	10/15/2002	-
North Plant	KNO3 GG storage	Vicksburg MS	KNO3 reclaimed	40 tons	To be disposed	10/31/2002	-
North Plant	Storage tanks	Vicksburg MS	HNO3-70%	27000 gals	To be disposed	10/31/2002	-
North Plant	Storage tanks	Vicksburg MS	Petro Ag	4400 gals	To be disposed	10/31/2002	10,000
North Plant	Storage tanks	Vicksburg MS	Petro Ag 375	4000 gals	To be disposed	10/31/2002	10,000
North Plant	Storage tanks	Vicksburg MS	3-0-11	11000 gals	To be disposed	10/31/2002	-
South Plant	Storage tanks	Vicksburg MS	HNO3-65%	850 tons	To be disposed	10/31/2002	-
South Plant	Storage tanks	Vicksburg MS	Mother liquor	80000 gals	To be disposed	10/31/2002	-
South Plant	Storage tanks	Vicksburg MS	Wastewater	10000 gals	To be disposed	10/31/2002	20,000
South Plant	Storage tanks	Vicksburg MS	Tall oil	21 tons	To be disposed	10/31/2002	-
South Plant	Storage tanks	Vicksburg MS	Castor oil	25 tons	To be disposed	10/31/2002	-
South Plant	Storage tanks	Vicksburg MS	MDI	4 tons	To be disposed	10/31/2002	-
South Plant	Storage tanks	Vicksburg MS	Paraffin wax	21 tons	To be disposed	10/31/2002	1,000
South Plant	Storage tanks	Vicksburg MS	Mag Oxide	24 tons	To be disposed	10/31/2002	1,000
South Plant	Storage tanks	Vicksburg MS	MicroElements	42 tons	To be disposed	10/31/2002	2,500
South Plant	Storage tanks	Vicksburg MS	Blending mtrls	38 tons	To be disposed	10/31/2002	2,500
South Plant	Storage tanks	Vicksburg MS	Waste oil	1000 gal	To be disposed	10/31/2002	-

Vicksburg Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002

Facility	Unit	Location	Material name	Quantity	Action	Action date	Disposal cost - $
South Plant	Warehouse	Vicksburg MS	MAP/MKP	40 tons	To be disposed	10/31/2002	2,500
South Plant	Warehouse	Vicksburg MS	Coated products	289 tons	To be disposed	10/31/2002	-
South Plant	Warehouse	Vicksburg MS	Antifoam	12 drums	To be disposed	10/31/2002	2,000
South Plant	Warehouse	Vicksburg MS	KNO3 50#bag	10 pallets	To be disposed	10/31/2002	-
South Plant	Warehouse	Vicksburg MS	Mag nitrate	4 tons	To be disposed	10/31/2002	1,000
Tri Island	Outside warehouse	Newrk NJ	KNO3 tech	2 tons	To be disposed	10/31/2002	1,000
Tri Island	Outside warehouse	Newrk NJ	MAP	7 tons	To be disposed	10/31/2002	-
Tri Island	Outside warehouse	Newrk NJ	Mag nitrate	2 tons	To be disposed	10/31/2002	1,000
Ferro	Outside warehouse	Cleveland OH	MAP	26 tons	To be disposed	10/31/2002	-
Radius	Outside warehouse	Los Angeles CA	MKP	6 tons	To be disposed	10/31/2002	-
North Plant	KNO3 Crystallizers	Vicksburg MS	KNO3/HNO3 mix	600 tons	To be disposed	10/31/2003	-
North Plant	Storage tanks	Vicksburg MS	N2O4 brown	30000 lbs	To be disposed	10/31/2002	60,000
North Plant	Storage tanks	Vicksburg MS	50% Caustic	17 tons	Plant use	N/A	ponds treatment
North Plant	Storage tanks	Vicksburg MS	R-134a	15 tons	Plant use	N/A	ponds treatment
North Plant	Storage tanks	Vicksburg MS	Sulfuric acid	39 tons	Plant use	N/A	ponds treatment
North Plant	Storage tanks	Vicksburg MS	Bleach	27000 gals	Plant use	N/A	-
North Plant	Storage tanks	Vicksburg MS	KOH	30 tons	Plant use	N/A	ponds treatment
South Plant	Storage tanks	Vicksburg MS	Lime	20 tons	Plant use	N/A	-
South Plant	Storage tanks	Vicksburg MS	Spent carbon	3 beds	Plant use	N/A	-
South Plant	Storage tanks	Vicksburg MS	20% Caustic	8800 gals	Plant use	N/A	ponds treatment
South Plant	Storage tanks	Vicksburg MS	Sulfuric acid	2900 gals	Plant use	N/A	ponds treatment
South Plant	Storage tanks	Vicksburg MS	Misc	NA	Plant use	N/A	ponds treatment
South Plant	Warehouse	Vicksburg MS	Granular clay	49 tons	Plant use	N/A	-
					Remaining Cost of Disposal		**114,500**
					Total All Disposal Costs		**126,819**

Cedar Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002			
Unit	**Location**	**Action**	**Action date**
Unit 1	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Unit 2	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Unit 3	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Unit 4	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Unit 5	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Unit 6	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Unit 7	West Helena AR	Mothball - Emptied, flushed and washed	3/8/02 - 8/31/02
Effluent ponds	West Helena AR	In service	N/A

Cedar Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002

Location	Material name	Quantity	Action	Action date	Disposal Cost - $
Products Disposed					
West Helena AR	Spent Acid	145420 lbs	Disposed	8/31/2002	-
West Helena AR	Nitric Acid	59500 lbs	Disposed	8/31/2002	-
West Helena AR	Sulfuric Acid	110200 lbs	Disposed	8/31/2002	-
West Helena AR	Lime	26000 lbs	Disposed	8/31/2002	-
West Helena AR	Mace	110 lbs	Disposed	8/31/2002	-
West Helena AR	Formic Acid	23735 lbs	Disposed	8/31/2002	-
West Helena AR	Hydrogen Peroxide	12000 lbs	Disposed	8/31/2002	-
West Helena AR	Calcium Chloride	8400 lbs	Disposed	8/31/2002	-
West Helena AR	Sodium Metabisulfite	8400 lbs	Disposed	8/31/2002	-
West Helena AR	Citric Acid	22000 lbs	Disposed	8/31/2002	-
West Helena AR	Nickel Catalyst	2400 lbs	Disposed	8/31/2002	-
West Helena AR	Platinum Catalyst	431 lbs	Disposed	8/31/2002	-
West Helena AR	Perklone D	80900 lbs	Disposed	8/31/2002	-
West Helena AR	Heptane	21560 lbs	Disposed	8/31/2002	-
West Helena AR	Acetic Anhydride	45040 lbs	Disposed	8/31/2002	-
West Helena AR	Nitromethane	2830 lbs	Disposed	8/31/2002	-
West Helena AR	2-AB	62097 lbs	Disposed	8/31/2002	-
West Helena AR	Tromethamine	41641 lbs	Disposed	8/31/2002	-
West Helena AR	Diuron	93000 lbs	Disposed	8/31/2002	-
West Helena AR	Miscellaneous Drummed Waste	NA	Disposed	4/30/2002	13,970
West Helena AR	Miscellaneous Drummed Waste	NA	Disposed	5/7/2002	6,620
West Helena AR	ODCB	NA	Disposed	5/14/2002	12,848
West Helena AR	Toluene, Mixed Acid, Labpacks, Methanol	NA	Disposed	5/20/2002	40,000
West Helena AR	Miscellaneous Drummed Waste	NA	Disposed	5/24/2002	6,000
West Helena AR	Miscellaneous Drummed Waste	NA	Disposed	6/28/2002	33,000
West Helena AR	Miscellaneous Drummed Waste	NA	Disposed	7/8/2002	38,715
West Helena AR	"Lights"	NA	Disposed	7/25/2002	7,700
West Helena AR	DCPI	200750 lbs	Disposed	7/31/2002	40,979

Cedar Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002						
Location	**Material name**	**Quantity**	**Action**	**Action date**	**Disposal Cost - $**	
West Helena AR	Miscellaneous Drummed Waste	NA	Disposed	8/5/2002	57,375	
West Helena AR	DCA Lights	NA	Disposed	8/5/2002	6,975	
West Helena AR	Mace, Pentabrom, Mixed Solvents	132601 lbs	Disposed	8/23/2002	78,000	
West Helena AR	2 loads of drumed Pentabrom.	included above	Disposed	8/29/2002	14,160	
West Helena AR	Caustic, Hill clean out	NA	Disposed	9/12/2002	44,820	
West Helena AR	Crushed drums	NA	Disposed	9/12/2002	9,480	
West Helena AR	Caustic, Hill clean out	NA	Disposed	9/16/2002	5,000	
West Helena AR	Wham, Nadex, Stepserse	NA	Disposed	9/23/2002	39,000	
			Total Disposed		**454,642**	
Product to be Disposed or Used						
West Helena AR	ODCB	186300 lbs	To be disposed	10/2/2002	5,000	
West Helena AR	ODCB	185010 lbs	To be disposed	10/15/2002	5,000	
West Helena AR	Flake Propanil	4500 lbs	To be disposed	10/31/2002	12,000	
West Helena AR	Ferrous sulfate	3450 lbs	To be disposed	10/31/2002	39,000	*
West Helena AR	Stepsparse DF-500	5 pallets	To be disposed	10/31/2002	*	
West Helena AR	Wham 60 DF	5 pallets	To be disposed	10/31/2002	*	
West Helena AR	Wham DF 80	5 pallets	To be disposed	10/31/2002	*	
West Helena AR	Wham DF 80	2 pallets	To be disposed	10/31/2002	*	
West Helena AR	Wham DF 80	19 pallets	To be disposed	10/31/2002	*	
West Helena AR	Propanil 60 DF	21 pallets	To be disposed	10/31/2002	*	
West Helena AR	Nadex 772	17 bags	To be disposed	10/31/2002	*	
West Helena AR	Tillam - Zeneca	14 cases	To be disposed	10/31/2002	*	
West Helena AR	Tillam flush	4 drums	To be disposed	10/31/2002	*	
West Helena AR	Ordram 15 WDG	100 lbs	To be disposed	10/31/2002	*	
West Helena AR	Therminol	20 drums	To be disposed	10/31/2002	*	
West Helena AR	50% caustic	15000 lbs	To be disposed	10/31/2002	*	
West Helena AR	R&D, etc	Misc	To be disposed	10/31/2002	5,000	
Pachuta MS	Alachlor	1142 kg	To be disposed	10/31/2002	46,591	**
Pachuta MS	Repose T	790 gal	To be disposed	10/31/2002	**	

Cedar Chemical - Status of Clean-Up and Mothball Activities as of October 1, 2002						
Location	**Material name**	**Quantity**	**Action**	**Action date**	**Disposal Cost - $**	
Pachuta MS	Isophorone	206 gal	To be disposed	10/31/2002	**	
Pachuta MS	Proxel GL	14403 lbs	To be disposed	10/31/2002	**	
Pachuta MS	Arquar 2C75	1432 lbs	To be disposed	10/31/2002	**	
Pachuta MS	Butachlor Tech	267 lbs	To be disposed	10/31/2002	**	
Pachuta MS	AU-566	945 lbs	To be disposed	10/31/2002	**	
Pachuta MS	Monochlorotoluene	42112 lbs	To be disposed	10/31/2002	**	
Pachuta MS	Aromatic 200	80831 lbs	To be disposed	10/31/2002	**	
Pachuta MS	Au 567	3423 lbs	To be disposed	10/31/2002	**	
Pachuta MS	AU 545	10946 lbs	To be disposed	10/31/2002	**	
Guatemala	Aceite Banano oil	2000 lbs	To be disposed	10/31/2002	5,000	
West Helena AR	50% Caustic Rayon grade	4200 lbs	Not to be disposed	NA	ponds treatment	
West Helena AR	Sulfuric acid	2 drums	Not to be disposed	NA	ponds treatment	
West Helena AR	Muriatic acid	4 drums	Not to be disposed	NA	ponds treatment	
West Helena AR	Propionic acid	4 drums	Not to be disposed	NA	ponds treatment	
West Helena AR	Operating supplies	NA	Not to be disposed	NA	ponds treatment	
			Remaining Cost of Disposal		**117,591**	
			Total All Disposal Costs		**572,233**	

Forecast of Monthly Expenses to Maintain Vicksburg and West Helena Plants *($000's)

	West Helena	Vicksburg	Total
Payroll & Related Costs	48	87	135
Utilities: Gas & Electric	40	75	115
Telephone	2	3	5
Supplies, Maintenance & EPA	10	10	20
General Insurance	-	-	-
Taxes	-	-	-
Leases / Executory Contracts	10	15	25
Travel	1	2	3
Other	15	15	30
Waste Disposal	-	-	-
Operating Expenses	**126**	**207**	**333**
Headcount	14	10	24

Assumptions:

1. - Headcount maintained at a total of 24 for security and maintenance.
2. - General insurance has been paid through March 2003. No amounts are included for future policy years.
3. - Property taxes have not been included in this analysis.
4. - Utilities are assumed to decrease approximately $35,000/month once mothball activities have been completed.
5. - All product disposals are assumed completed.